

ENTERED

May 24, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

| | | |
|--------------------------|---|---------------------------------|
| UNITED STATES OF AMERICA | § | |
| | § | |
| VS. | § | CRIMINAL ACTION NO. 2:13-CR-381 |
| | § | CIVIL NO. 2:16-245 |
| MANUEL PRUNEDA | § | |

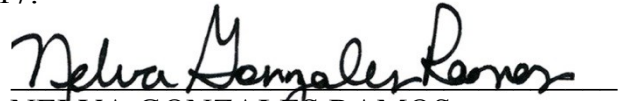
ORDER

The Fifth Circuit Court of Appeals has remanded this cause for a determination of the timeliness of Manuel Pruneda's notice of appeal. His notice is dated December 16, 2016; however, it was not received until five days later, and the envelope's postmark is impossible to read. Although Pruneda is entitled to application of the mailbox rule, he has the burden to demonstrate that he deposited his notice in the prison mail system in a timely manner.

The Court previously ordered Pruneda to obtain and file a copy of the prison mail log that noted the date on which he deposited his notice of appeal with the prison authorities. In response, Pruneda filed a notarized copy of an email from the prison mail room stating that the mail room "does not keep a log of legal mail[.] [T]he only time we log something in is if it is a certified letter[.]" D.E. 48, p.2. Pruneda also submitted a Declaration under Penalty of Perjury stating that he deposited his notice of appeal in the prison mailbox on December 16, 2016. *Id.*, p.1. This filing was dated May 10, 2017; postmarked May 11, 2017; and received by the Court on May 15, 2017—five days after it was executed.

The only evidence before the Court supports a finding that Prudena mailed his notice of appeal on December 16, 2016—sixty days after the Final Judgment from which he is appealing was entered. Accordingly, the Court finds Pruneda's appeal is timely.

ORDERED this 24th day of May, 2017.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE